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**Congress of the United States**  
**Washington, DC 20515**

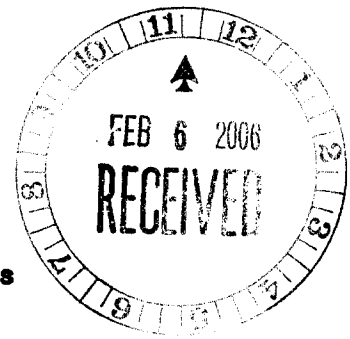
January 26, 2006

The Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

**ENTERED**  
**Office of Proceedings**

**FEB 6 2006**

**Part of**  
**Public Record**



RE: STB Finance Docket No. 34797  
New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railway  
Petition for an Exemption from 49 U.S.C. 10901 To Acquire, Construct and  
Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, MA

Dear Mr. Williams:

We write to comment on the latest in a series of requests by New England Transrail (NET), LLC, d/b/a Wilmington and Woburn Terminal Railway for an acquisition, construction and operation exemption for a rail reload facility in Wilmington and Woburn, Massachusetts. We have voiced our concerns on this proposal numerous times over the past two and a half years in letters to you dated May 1, 2005 and July 11, 2003; to Mr. Neil Sullivan dated October 29, 2003; and to the Case Control Unit of the Surface Transportation Board (STB) dated September 1, 2004. Copies of the previous letters accompanied our May 1, 2005 submission to you.

We commend the Board for dismissing the NET's petition on May 3, 2005 and would urge very careful consideration of the latest NET submission as it fails, in our opinion, to adequately address the many issues of concern raised about the previous proposal.

You may recall that in our May 1, 2005, we raised four main points of concern for STB to consider.

- I. The STB needs to consider whether the recently proposed solid waste activities – specifically the transfer of loose solid waste into hoppers and the grinding and baling of solid waste – constitute transportation by rail.**
- II. The proposed solid waste activities including the transfer of loose solid waste into hoppers and the grinding and baling of solid waste do not constitute transportation by rail nor are the proposed activities integrally related to transportation by rail.**

With respect to these first two concerns, we find nothing in the NET's new petition that changes our view that the proposed solid waste activities of transferring loose solid waste into hoppers and grinding and baling solid waste constitutes "transportation by rail." Further, we do not believe that the proposed activities are integrally related to transportation by rail.

We disagree with NET's contention that "the plain language of the statute and the applicable case law require a broad reading of the term "transportation" to encompass these shredding and baling activities because they are an integral part of NET's rail operations." To the contrary, in the case we cited in our May 1, 2005 letter, Hi Tech Trans, LLC v. New Jersey Department of Environmental Protection, 382 F. 3d 295 (3<sup>rd</sup> Cir, 2004), the court rejected a claim of preemption by the rail carrier based on activity similar to that proposed by NET in this instance. In that case, demolition debris was discharged into hoppers then loaded into rail cars. The court held that such activity, at most, constituted transportation to a rail carrier not by a rail carrier.

In addition, some of the rationale cited by NET, for example, that "it will minimize damage to containers and rail cars; it will improve the utilization of capacity; it will increase the number of cars available to ship that product," seem to us more integral to maximizing NET profit rather than integral to transportation by rail.

**III. The Massachusetts Department of Environmental Protection (MADEP) has a legitimate and compelling interest in the non-rail activities being proposed by NET and such activities should be subject to appropriate state environmental review.**

With respect to our third area of concern, we continue to believe that the MADEP has a legitimate and compelling interest in the solid waste disposal aspect of NET's proposed activities and should be able to exercise their appropriate oversight authority.

**IV. The SEA should have required a full environmental impact statement for the proposed rail operations, and its conclusion that the proposed project will not result in any significant environmental impacts is flawed.**

And finally, we remain troubled that the Board's Section of Environmental Analysis (SEA) did not require a full environmental impact statement for NET's proposed rail operations based on its original submission and would urge the SEA to require a full environmental impact statement for NET's new petition. We also find alarming NET's contention that Olin's Licensed Site Professional Ms. Hanley has expressed an opinion that, "any future listing of the Olin site on the National Priorities List by the federal Environmental Protection Agency (EPA) should not prevent the development of the NET Facility at the property."

We believe that EPA should make that determination and urge you in the strongest possible terms to solicit immediately the EPA's expert opinion on the matter.


In conclusion, we share many of the concerns expressed by the Town of Wilmington; the City of Woburn; Massachusetts DEP; and other interested parties about this project and we support requests that the Board conduct a local hearing on this matter. We believe the Board was correct to dismiss NET's earlier petition. As the Board considers the latest NET petition, we ask that the Board not expedite the request, that the Board require a Full Environmental Impact Statement for this new proposal, and that the Board delay any decisions on this petition until the EPA has been consulted with respect to EPA's site investigation and remediation recommendations. Also, we ask as we did previously, that the Board specifically find that its jurisdiction does not extend to

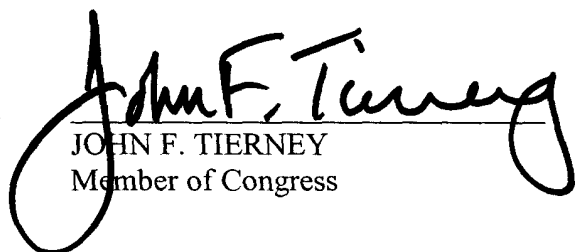
NET's proposed solid waste activities at the site involving the offloading of loose solid waste materials and the grinding and baling of those materials, as such activities are properly subject to the site assignment and permit process established under the laws of the Commonwealth of Massachusetts and within the jurisdiction of the Massachusetts DEP.

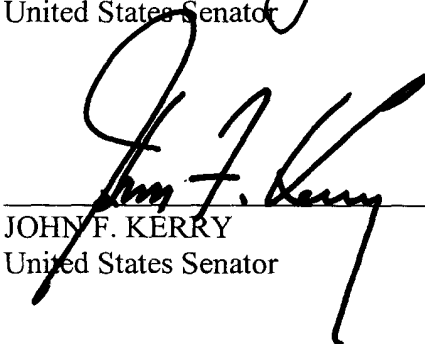
We appreciate the opportunity to comment and look forward to your response.

Sincerely,

  
EDWARD J. MARKEY  
Member of Congress

  
EDWARD M. KENNEDY  
United States Senator

  
JOHN F. TIERNEY  
Member of Congress

  
JOHN F. KERRY  
United States Senator